

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

FILED  
U.S. DISTRICT COURT

VICTOR S. MARTINI, )  
vs. )  
PRESQUE ISLE CAPITAL MANAGEMENT, )  
INC. and JAMES H. THOMAS, )  
Defendants. )  
Plaintiff, )  
vs. )  
No. 04-354E CLERK  
Hon. Maurice B. Cohill, Jr.  
Magistrate Judge Susan  
Paradise Baxter

**DEFENDANTS' OBJECTIONS  
TO PART OF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

NOW COMES Defendants, through undersigned counsel, and pursuant to Local Rule 72.1.4 B, to object to part of Magistrate Judge Susan Paradise Baxter's Report and Recommendations dated February 6, 2006 [Document # 28] (the "Report").

1. Defendants object to the Report only insofar as it failed to address one argument in favor of dismissal, namely, Plaintiff's failure to plead the requisite elements of Count V. See Document # 25, at p. 4. Given that Plaintiff has failed to plead the elements, for the reasons set forth in Document # 25, Count V should be dismissed without prejudice.

Dated: February 9, 2006

Respectfully submitted,

**Presque Isle Capital Management, Inc.  
and James H. Thomas**

By:



Robert L. Herskovits

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\*Subject to *pro hac vice*  
admission

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused to be served on February 9, 2006, by facsimile, a copy of the DEFENDANTS' TO PART OF MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, to Plaintiff's counsel:

Arnold Y. Steinberg, Esq.  
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By:   
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February 9, 2006

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**CLERK U.S. DISTRICT COURT  
WEST. DIST. OF PENNSYLVANIA**

United States District Courthouse  
Western District of Pennsylvania  
17 South Park Row  
Erie, PA 16501

Attn: Clerk's Office

Re: Victor S. Martini v. Presque Isle Capital, et al.  
04-354E

Dear Sir or Madam:

I represent defendants Presque Isle Capital Management, Inc. and James H. Thomas subject to *pro hac vice* admission.

Enclosed for filing are the original and one copy of:

- Defendants' Objections to Part of Magistrate Judge's Report and Recommendations.

Defendants' counsel has submitted an ECF Registration Form. Since that application remains pending, we respectfully request that the Clerk's Office accept this hard copy filing.

Yours truly,

Robert L. Herskovits

Cc: Arnold Y. Steinberg, Esq. (By fax w/enc.)